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DIFFERENT RELIGIONS, DIFFERENT POLITICS: EVALUATING THE ROLE OF COMPETING RELIGIOUS TRADITIONS IN AMERICAN POLITICS AND LAW*

*Daniel O. Conkle***

We are in the midst of a continuing debate about the role of religion in American politics and law. Advocates of a greater role for religion in public life—and I count myself among them—lament the privatization of religion and the secularization of public debate. Although some of the claims about privatization and secularization may be exaggerated, it seems undeniable that religion, despite its apparently robust private health, plays a relatively modest role in the public life of modern America. The public role that it does play, moreover, is under a hovering cloud of suspicion, with critics constantly suggesting that the separation of church and state is being threatened.

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This essay is based upon a paper that I presented at Hamline University's Fourth Annual Symposium on Law, Religion and Ethics, which was held in October, 1991. I also presented the paper in March, 1992, to an interdisciplinary Seminar on Religion and Moral Discourse, sponsored by the Lilly Endowment and by Indiana University's Poynter Center for the Study of Ethics and American Institutions. I received helpful comments, questions, and criticisms on each of these occasions. Of particular note is the thoughtful and thought-provoking critique that Professor Samuel W. Calhoun presented as the commentator on my paper at the Hamline Symposium. I also wish to thank Scott C. Idleman for his research assistance and the Rev. Fredrick J. Largen and Professors John H. Garvey, Frederick Mark Gedicks, Steven D. Smith, Stephen J. Stein, Douglas Sturm, and Mark Tushnet for their valuable comments on earlier versions of this essay.

In this essay, I advance a radical proposition: that privatization and secularization are the product, in part, of religious freedom run amuck. In particular, the concept of religious freedom has evolved to include not merely legal toleration, but also a strong commitment to religious equality. This principle of religious equality supports the protection and nurturing of religious diversity in the private realm. Ironically, however, it also suggests that the diversity among religions is irrelevant in determining the proper role for religion in the public sphere, for the equality principle implies that what is right for one is right for all. On this view, whatever the proper role for religion in politics and law, it must be no different for one religion than another. This public leveling of religion, moreover, tends to ensure that the "equal" role that religions play in American public life will be modest, if not inconsequential. Even as we continue to extol its private diversity, religion has become publicly generic and thereby largely insignificant.

As long as we treat it generically, religion cannot regain a significant and accepted role in American politics and law. In fact, religions are not generic, and their differences may significantly affect the value of their contributions to America's public life. The principle of religious equality suggests that normative evaluations or comparisons of religions are not appropriate. But my argument here is that we should resist the equality principle and begin the task of evaluation and comparison.

This argument is controversial, for to intrude on the principle of religious equality is to intrude on the evolving concept of religious freedom. The slippery slope might be a backslide, carrying us back to social or even legal intolerance. We must beware this risk, continuing always to respect the legal rights and personal dignity of all Americans. The principle of religious equality is important and appropriate in many contexts. It requires, for example, that we fully protect the free exercise and free speech rights of all religious believers, including their right to attempt to influence the law and public policy. My argument is simply that when religious believers exercise their rights in the political process, some religious arguments have more to offer than others, and that they accordingly are entitled to more attention and public consideration.¹

1. Elsewhere I have questioned the principle of religious equality as applied to certain legal questions arising under the Establishment Clause. See Daniel O. Conkle, *Religious Purpose, Inerrancy, and the Establishment Clause*, 67 Ind L J 1 (1991). My primary focus here, by contrast, is not on the legality of religion in American public life, but rather on its propriety or

In Part I of this essay, I begin by highlighting the diversity and the apparent vigor of private religion in America. I then address the principle of religious equality and how it has leveled and thereby belittled the role of religion in American public life. Part II begins the difficult task of evaluating the contributions of various religious traditions to American politics and law. In an attempt to lay the groundwork for further inquiries, I set forth and explore several sets of general criteria by which competing religious traditions might be compared and contrasted. "Procedural" criteria relate to the religion's method of thought; "structural" criteria focus on the religion's basic orientation toward society, politics, and law; and "substantive" criteria address the religion's substantive positions on political and moral issues. I end the essay with some concluding observations.

I. RELIGION IN AMERICA: PRIVATE DIVERSITY AND PUBLIC EQUALITY

A. The Diversity and Strength of Religion in America

The history of American religion tells a story of ever-increasing religious diversity. There was significant diversity from the beginning, although it was largely confined to Protestant denominations and sects. As immigration patterns changed, large numbers of Roman Catholics came to the United States, which dramatically changed the religious composition of the society. Jewish immigrants arrived as well. America was no longer a Christian nation, much less a Protestant nation. In the 1950s, Professor Will Herberg described American religion in terms of "Protestant-Catholic-Jew."² In the 1990s, even that description seems decidedly narrow and incomplete.

To be sure, the vast majority of Americans still are Protestant or Catholic, and the non-Christian population is primarily Jewish. But this portrayal is overly simplistic. According to an important recent survey, over 85% of Americans are Christians, but they are divided into numerous groups. Roman Catholics, with over 25% of the population, constitute the single largest Christian group. Of the roughly 60% that are Protestant, the largest group is the Baptists, with just under 20% of the population. Other major Protestant faiths include Methodism and Lutheranism, but there of course are many others.

value. Needless to say, this latter question is influenced—though not controlled—by the constitutional and legal structure of our society, and the provisions of the First Amendment are obviously important in this respect. See below, notes 38-41 and accompanying text.

2. Will Herberg, *Protestant-Catholic-Jew* (Doubleday, 1955).

Nearly 4% of the population follows a non-Christian faith. Roughly half of these non-Christians are Jewish; many of the others are Muslim. Smaller numbers follow other faiths, such as Buddhism, Hinduism, Baha'i, Taoism, Rastafarianism, or New Age religions.³ This listing is by no means exhaustive. This general description of American religions, moreover, ignores the important divisions and subgroupings that exist within many of them. When these are considered, the diversity of American religion is startling. One standard source, for example, identifies over 1,300 "primary religious bodies" in the United States.⁴

Surveys indicate that religion in America is not only diverse, but also pervasive and strong. Roughly 90% of all Americans identify with some particular religion,⁵ and an even larger number, over 95%, believe in God or a Supreme Being.⁶ Religion is "very important" to over 55% of the population, and if we add in those for whom religion is "fairly important," the percentage exceeds 85%.⁷ The figures drop off to some extent when we look for evidence of institutional affiliation and practice. Even so, two out of every three Americans belong to a church or synagogue, and 40% attend religious services during any given week.⁸

B. Religious Equality and Its Implications

1. The Evolution of Religious Freedom

This picture of religious diversity and prosperity stands against the backdrop of America's long-standing commitment to religious freedom. Indeed, as a response to America's ever-increasing religious diversity, the commitment to religious freedom has deepened significantly over time, and thus has fostered even more diversity.

In one form or another, the legal principle of religious freedom has been present from the time of the nation's founding. Symbolized by the First Amendment, this legal principle protects the free exercise

3. See Ari L. Goldman, *Portrait of Religion in U.S. Holds Dozens of Surprises*, NY Times A1 col 1 (Apr 10, 1991). Commissioned by the Graduate School of the City University of New York, this survey of 113,000 people from around the nation is described as "the largest and most comprehensive effort to draw a portrait of religion in America." *Id.*

4. See J. Gordon Melton, *The Encyclopedia of American Religions* (Gale, 3d ed 1989). This source actually lists 1,588 such bodies, but these include some from Canada.

5. See Goldman, NY Times (cited in note 3).

6. *Religion and Politics*, Los Angeles Times Survey, Question No. 61 (July 1986) (available on microfiche).

7. George Gallup, Jr., *The Gallup Poll: Public Opinion 1990* at 67 (Scholarly Resources, 1991).

8. *Id.* at 68.

of religion and, through disestablishment, it also precludes more indirect encroachments on religious freedom. The legal principle of religious freedom, however, was relatively weak throughout much of our history, and religious minorities often suffered legal disadvantages.⁹ Indeed, one could argue that from a legal perspective, religious freedom did not become a national priority until the 1940s, when the Supreme Court first began to apply the First Amendment's religion clauses to state and local government action.¹⁰ Before then, religious freedom had been left largely to the uncertain protection of state law.

Until relatively recent times, moreover, the principle of religious freedom did not generate a strong requirement of religious equality, either in law or in public sensibilities. Throughout much of our history, there has been an overt Christian, and primarily Protestant, dominance in American law and public life. In the founding period, according to Justice Story, it was generally understood "that Christianity ought to receive encouragement from the state so far as was not incompatible with the private rights of conscience and the freedom of religious worship."¹¹ "An attempt to level all religions . . .," he added, "would have created universal disapprobation, if not universal indignation."¹² The situation was much the same throughout the 1800s. In 1892, for example, the Supreme Court, based upon its survey of American law and culture, still was able to declare with confidence that "this is a Christian nation."¹³

This legally sanctioned Christian dominance continued well into the current century. As late as 1931, the Supreme Court felt free to reaffirm in a judicial opinion that "[w]e are a Christian people."¹⁴ Indeed, the notion of religious equality—especially as extended to non-Christian religions—was an undeveloped legal principle until perhaps

9. See Harold J. Berman, *Religion and Law: The First Amendment in Historical Perspective*, 35 Emory L J 777, 779-83 (1986); John T. Noonan, Jr., *The Constitution's Protection of Individual Rights: The Real Role of the Religion Clauses*, 49 U Pitt L Rev 717, 718-19 (1988).

10. See *Cantwell v Connecticut*, 310 US 296 (1940) (Free Exercise Clause); *Everson v Board of Educ.*, 330 US 1 (1947) (Establishment Clause).

11. Joseph Story, 2 *Commentaries on the Constitution of the United States* § 1874 at 630-31 (Little Brown, 5th ed 1891).

12. *Id.* at 631. See also § 1871, at 628 ("[I]t is impossible for those who believe in the truth of Christianity as a divine revelation to doubt that it is the especial duty of government to foster and encourage it among all the citizens and subjects."). This is not to suggest that the rhetoric of religious equality was entirely absent in the founding period. See Timothy L. Hall, *Religion, Equality, and Difference*, 65 Temp L Rev 1, 2-3 (1992).

13. *Church of the Holy Trinity v United States*, 143 US 457, 471 (1892).

14. *United States v MacIntosh*, 283 US 605, 625 (1931). Compare Berman, 35 Emory L J at 779 (cited in note 9) (suggesting that prior to World War I, the United States thought of itself "as a Protestant Christian country").

the 1960s. Christian prayers and Bible readings were common in the public schools, for example, until the Supreme Court banned them in its 1962 and 1963 decisions.¹⁵ Likewise, in the quasi-public arenas of public accommodations, employment, and housing, religious discrimination was not generally prohibited until the Civil Rights Acts of 1964¹⁶ and 1968.¹⁷ Only in the last quarter century, then, have we strongly embraced the principle of religious equality as an important component of religious freedom.

2. The Principle of Religious Equality

Today, the principle of religious equality forms a critical part of the law of religious freedom. Not only is the principle embodied in the Civil Rights Acts, but it also lies at the core of the Supreme Court's First Amendment doctrine. As interpreted by the Court, the Establishment Clause forbids the government to "prefer one religion over another."¹⁸ Even the Court's critics have applauded this "no preference" requirement,¹⁹ which the Court has called "the clearest command of the Establishment Clause."²⁰ The principle of religious equality also has played a powerful role in the Court's interpretation of the Free Exercise Clause. When it extended free exercise protec-

15. See *Engel v Vitale*, 370 US 421 (1962); *School Dist. of Abington Township v Schempp*, 374 US 203 (1963).

16. See Civil Rights Act of 1964, Pub L No 88-352, Title II, § 201, 78 Stat 241, 243, codified at 42 USC § 2000a (1988) (public accommodations); *id.*, Title VII, § 703, 78 Stat 241, 255, codified as amended at 42 USC § 2000e-2 (1988) (employment).

17. See Fair Housing Act of 1968, Pub L No 90-284, Title VIII, § 804, 82 Stat 73, 83, codified as amended at 42 USC § 3604 (1988).

18. *Everson v Board of Educ.*, 330 US 1, 15 (1947). Based on this principle, the Court has ruled that government action preferring certain religions over others should be subjected to strict judicial scrutiny. See *Larson v Valente*, 456 US 228, 244-55 (1982).

19. See, for example, *Wallace v Jaffree*, 472 US 38, 113 (1985) (Rehnquist dissenting) (government is precluded "from asserting a preference for one religious denomination or sect over others"); Robert L. Cord, *Separation of Church and State: Historical Fact and Current Fiction* (Lambeth Press, 1982). See generally Rodney K. Smith, *Nonpreferentialism in Establishment Clause Analysis: A Response to Professor Laycock*, 65 St John's L Rev 245 (1991) (discussing possible variants of "no preference" notion).

20. *Larson v Valente*, 456 US at 244. See generally John H. Garvey, *Freedom and Equality in the Religion Clauses*, 1981 S Ct Rev 193 (finding equality principle inherent in Establishment Clause); Ira C. Lupu, *Keeping the Faith: Religion, Equality and Speech in the U.S. Constitution*, 18 Conn L Rev 739, 741-55 (1986) (reading Establishment Clause to embody principle of "equal religious liberty"); Michael A. Paulsen, *Religion, Equality, and the Constitution: An Equal Protection Approach to Establishment Clause Adjudication*, 61 Notre Dame L Rev 311 (1986) (accord). Compare Ira C. Lupu, *Reconstructing the Establishment Clause: The Case Against Discretionary Accommodation of Religion*, 140 U Pa L Rev 555, 580 (1991) ("Equal religious liberty is simply one of a series of parallel constitutional commitments—equal respect for ideas, for consciences, for privacy, for racial, ethnic, or religious identity, and for voluntary associational choices.").

tion to Saturday Sabbatarians, for example, the Court emphasized that its ruling would put these religious believers on a par with Sunday worshippers.²¹ Ironically, the equality principle even helps explain the Court's recent and controversial decision in *Employment Division v Smith*, in which the Court broadly retreated from the granting of religious exemptions from laws of general application.²² Whatever the Court's other justifications, *Smith* rested in part on a belief that the granting of such exemptions creates an undue risk of religious discrimination, a risk that cannot be reconciled with the paramount requirement of religious equality.²³

The evolving principle of religious equality is designed to enhance the freedom and dignity of all religious believers, and it has achieved a significant measure of success toward this end. It has accorded legal respect to religious believers and—although religious bigotry has not disappeared—it has helped encourage a societal norm of religious toleration. As a result, this principle generally has supported and nurtured the diversity and vitality of the American reli-

21. See *Sherbert v Verner*, 374 US 398, 409 (1963) ("the extension of unemployment benefits to Sabbatarians in common with Sunday worshippers reflects nothing more than the governmental obligation of neutrality in the face of religious differences").

22. 494 US 872 (1990). Congress has attempted to repudiate *Smith* by statute. See Religious Freedom Restoration Act of 1993, Pub L No 103-141, 107 Stat 1488.

23. Justice Scalia's majority opinion in *Smith* contained conflicting statements on this point. On the one hand, Scalia apologetically stated that by leaving religious freedom largely to the political process, the Court's decision might actually engender a type of religious discrimination by "plac[ing] at a relative disadvantage those religious practices that are not widely engaged in." *Id.* at 890. At the same time, however, he suggested that free exercise exemptions were "a constitutional anomaly," unlike the "constitutional norm" of "equality of treatment," *id.* at 886, and that the Court would continue to "strictly scrutinize governmental classifications based on religion," *id.* at 886 n 3.

Whatever the ambiguities in Scalia's rationale, his broad retreat from the granting of free exercise exemptions was joined by Justice Stevens, who provided a critical fifth vote for the majority opinion. In joining the Court's general renunciation of free exercise exemptions, Justice Stevens clearly was influenced by the principle of religious equality, on which he consistently has relied in arguing against such exemptions. See, for example, *United States v Lee*, 455 US 252, 263 n 2 (1982) (Stevens concurring in the judgment) ("[T]he principal reason for adopting a strong presumption against [claims for religious exemptions] . . . is the overriding interest in keeping the government—whether it be the legislature or the courts—out of the business of evaluating the relative merits of differing religious claims," which can create the appearance of "favoring one religion over another."); *Goldman v Weinberger*, 475 US 503, 512 (1986) (Stevens concurring) (reiterating the discriminatory potential of religious exemptions and noting "the interest in uniform treatment for the members of all religious faiths").

(Justice O'Connor provided a sixth vote for the Court's judgment in *Smith*, but she wrote a separate opinion that rejected the majority's dramatic reconstruction of free exercise doctrine. See 494 US at 891-907 (O'Connor concurring in the judgment).)

For a recent and interesting discussion of the role of equality under both the Establishment Clause and the Free Exercise Clause, see Hall, 65 Temp L Rev 1 (cited in note 12).

gious experience.²⁴ But we dare not miss the underlying predicate for the principle of religious equality: that religion does not matter, at least not in the public domain. "[A]ny form of religious discrimination," writes one scholar, "needs to be seen as incompatible with religious liberty and should be viewed as no less a violation of the human person than discrimination that is based on race, national origin, or sex."²⁵ Like other "arbitrary" factors, religion is a public irrelevancy.

To say that religion is a public irrelevancy for some purposes does not mean that it must be irrelevant for all purposes. It is one thing to say that religion should not be the basis for hiring or firing; it is something else to say that religion is irrelevant to the public life of our society. Unfortunately, however, these different issues have been conflated, and the idea of public irrelevancy—grounded in the principle of religious equality—has been extended to the role of religion in public life. Professor Lawrence B. Solum's argument is representative. Professor Solum contends that to use religion as the basis for a political decision is to denigrate the equality of citizens, because not all citizens will share the religious beliefs in question.²⁶ "In this sense," Solum maintains, "religion is like race or national origin."²⁷

The principle of religious equality implies that religions should be insulated from normative evaluation and comparison. In the public domain, we therefore tend to see religion as religion; none is superior, none is inferior. We are driven toward the view that religion is merely a matter of taste, a matter of private and individual taste. Despite the diversity and apparent vibrancy of private religion in America, religion in the public sphere takes on a normative sameness and a resultant insignificance. Matters of taste, after all, are simply matters of taste. My taste in wine is no "better" than yours, nor vice versa. So, too, with religion. However important they may be to individuals, matters of taste should not become matters of public policy. Religious citizens may have the taste for a religiously-informed public

24. I say "generally." The Supreme Court's recent decision in *Smith*, grounded in part on the principle of religious equality, suggests that this principle may not always support religious diversity and vitality. See above, notes 22-23 and accompanying text.

25. James E. Wood, Jr., *Religious Pluralism and Religious Freedom*, 31 J Church & State 7, 12 (1989). "This is not to ignore the profound differences in teachings and practices that divide religions from one another," the author continues, "but these differences are no basis for any form of legal discrimination between the various religions." *Id.* Compare Michael W. McConnell, *Free Exercise Revisionism and the Smith Decision*, 57 U Chi L Rev 1109, 1139-41 (1990) (arguing that religious differences are important and should be legally accommodated by treating religion more like handicap than like race).

26. Lawrence B. Solum, *Faith and Justice*, 39 DePaul L Rev 1083, 1092-95 (1990).

27. *Id.* at 1093 n 32.

morality, but they should not, through political action, attempt to "impose" that morality on their fellow citizens.²⁸ Religion is thus privatized, and public debate made secular.²⁹

3. The Privatization of Religion and the Secularization of Public Discourse

Others have documented the privatization of religion and the secularization of public discourse. As Professor Frederick Mark Gedicks has shown, "there is in the United States a strong cultural assumption that religion should be private, and politics should be secular."³⁰ Although not universally accepted, this assumption is widely held in the popular culture, and it is especially pronounced within various influential groups, including public educators, the media, academics, and judges.³¹ Consistent with modern liberal theory, religion is viewed as a private good that lacks public significance.³² Thus, to the extent that religion does influence public policy, this is broadly

28. "Raise a question concerning public morality," writes the Rev. Richard John Neuhaus, "and the objection immediately comes: 'Whose morality or whose values will be imposed upon whom?'" Richard John Neuhaus, *The Moral Delegitimation of Law*, 4 Notre Dame J L Ethics & Pub Pol'y 51, 55 (1989).

29. See generally Robert Wuthnow, *The Restructuring of American Religion: Society and Faith Since World War II*, at 277-82 (Princeton Univ Press, 1988) (arguing that in recent decades, America's understanding of freedom has evolved to include an ethos of "radically relativized choice," which "turns moral discourse into a mere discussion of personal preferences").

30. Frederick Mark Gedicks, *Some Political Implications of Religious Belief*, 4 Notre Dame J L Ethics & Pub Pol'y 419, 421 (1990). See also Steven D. Smith, *The Rise and Fall of Religious Freedom in Constitutional Discourse*, 140 U Pa L Rev 149, 169-78 (1991) (arguing that the decline of public religion is not the product of declining religious commitment, but rather of the belief that religion is inadmissible in public debate). Compare Richard S. Myers, *The Supreme Court and the Privatization of Religion*, 41 Cath U L Rev 19, 59-60 (1991) (noting that Supreme Court justices who are suspicious of public religion tend to support the free exercise of private religion).

31. See Gedicks, 4 Notre Dame J L Ethics & Pub Pol'y at 421-27 (cited in note 30). Using judicial appointees as his example, Professor Sanford Levinson argues that those who would become public officials are forced to suppress their private, religious identities by "proclaim[ing] the practical meaninglessness" of their religious faiths. Sanford Levinson, *The Confrontation of Religious Faith and Civil Religion: Catholics Becoming Justices*, 39 DePaul L Rev 1047, 1049 (1990). See also Stephen L. Carter, *The Religiously Devout Judge*, 64 Notre Dame L Rev 932 (1989).

32. Professor John Rawls, at least in his early work, can be read as the progenitor of this philosophical perspective on religion. See John Rawls, *A Theory of Justice* (Belknap Press, 1971). For a recent effort to defend liberalism's exclusion of religion from politics and law, see Solum, 39 DePaul L Rev 1083 (cited in note 26). For a critical and questioning account of this exclusion and its philosophical predicate, see Frederick Mark Gedicks, *Public Life and Hostility to Religion*, 78 Va L Rev 671 (1992).

Professor Mark Tushnet has argued that the Supreme Court's religion clause decisions generally protect religious beliefs only when they have no socially significant consequences, thereby bringing the Court's doctrine roughly in line with modern liberal thought. See Mark

understood to be problematic. In what may be only a slight exaggeration, Professor Stephen L. Carter claims that we are coming to view religion as merely a "hobby."³³ And Carter sees the situation only getting worse: "[W]e are moving toward a society," he writes, "in which religion is treated as a sort of public embarrassment, something not fit for polite company."³⁴

This continuing pattern of privatization and secularization has triggered renewed interest in the role of religion in American politics and law. Often, however, the arguments on each side of the religion-and-politics debate treat religion as a generic phenomenon, ignoring the diversity of American religion and confirming the principle of religious equality. Different scholars have different conceptions of this generic religion. Not surprisingly, liberal critics of religion in politics tend to paint a negative portrait. Professor Bruce Ackerman, for example, has been criticized for having a simplistic, if not archaic, understanding of religion.³⁵ But even those on the other side may be insufficiently attentive to American religious diversity. Professor Michael J. Perry, for instance, has been chided for depicting religion in terms that seem largely confined to Perry's own version of Roman Catholicism.³⁶

"Secularists of a certain sort denounce the impact of religion on public policy because, in their view, all religions are basically irrational throwbacks to a pre-Enlightenment era," writes Professor Mark Tushnet. "Religionists . . . of a certain sort approve the impact of religion on public policy," he continues, "because when they say religion they mean the kind of religion of which they approve"³⁷ Whether positive or negative, generic treatments of religion imply

Tushnet, *Red, White, and Blue: A Critical Analysis of Constitutional Law* 257-72 (Harvard U Press, 1988).

33. Stephen L. Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* 22 (BasicBooks, 1993).

34. Stephen L. Carter, *The Inaugural Development Fund Lectures: Scientific Liberalism, Scientistic Law*, 69 *Or L Rev* 471, 501 (1990).

35. Edward McGlynn Gaffney, Jr., *Politics without Brackets on Religious Convictions: Michael Perry and Bruce Ackerman on Neutrality*, 64 *Tul L Rev* 1143, 1147-51 (1990).

36. Michael W. McConnell, *The Role of Democratic Politics in Transforming Moral Convictions into Law*, 98 *Yale L J* 1501, 1505-06, 1509-11 (1989) (book review of Michael J. Perry, *Morality, Politics, and Law: A Bicentennial Essay* (Oxford U Press, 1988)).

In his most recent book, Professor Perry defends, on theological grounds, his normative understanding of religion. Although he focuses mainly on religion as he understands it, he also recognizes that there are other prevalent understandings, and therefore that religion is not a generic phenomenon. Michael J. Perry, *Love and Power: The Role of Religion and Morality in American Politics* 100-12, 121-22, 139-41 (Oxford U Press, 1991).

37. Mark Tushnet, *Comments on Gedicks and Ball*, 4 *Notre Dame J L Ethics & Pub Pol'y* 457, 458 (1990).

that religions cannot or should not be differentiated. This confirms the principle of religious equality and thereby supports the leveling and belittling of religion, ensuring that privatization and secularization will continue unabated.

However noble its origins and however important its continuation in many contexts, the principle of religious equality now blocks the path of those who wish to bring religion back to the public domain. Unless this barrier can be overcome, religion will never again play a role in American politics and law that is both prominent and culturally accepted.

II. RELIGION IN POLITICS AND LAW: TOWARD A NORMATIVE EVALUATION OF COMPETING RELIGIOUS TRADITIONS

To overcome the principle of religious equality, we must compare and contrast competing religious traditions. In undertaking this task, we need to identify factors that bear on the question at issue—the role of religion in American politics and law. This examination in turn requires a consideration of what that role should be. A suggestive vision of this role will emerge from the discussion that follows. Preliminarily, however, I note that the First Amendment limits the role of religion in politics by precluding the adoption of laws or government policies that reflect certain kinds of political efforts. For example, laws cannot be passed to squelch the free speech or free exercise rights of other citizens.

Likewise, the First Amendment is properly understood to preclude, at least in general, the use of law or other government action to advance religious purposes that are spiritual in nature; by this I mean purposes that directly address spiritual, as opposed to worldly, matters. As I have argued elsewhere,³⁸ religious individuals and groups can—and do—readily advance their spiritual missions without the government's (often unhelpful) "help." For the government to be involved in these efforts is a gratuitous insult to citizens who do not share the same spiritual vision, an insult that causes injury not only to these disaffected citizens, but also to the political community itself. For this reason, it generally is unconstitutional for the government to engage in prayer or other devotional activities, or to attempt to mandate, encourage, or support such activities by individuals.³⁹ The ap-

38. This discussion is drawn from a more elaborate analysis in Conkle, 67 Ind L J at 5-10 (cited in note 1). See also Daniel O. Conkle, *Toward a General Theory of the Establishment Clause*, 82 Nw U L Rev 1113, 1164-69, 1172-87 (1988).

39. I say "generally." Exceptions may be appropriate for certain government actions that

propriate role of religion in politics should not include attempts to adopt these kinds of unconstitutional government practices.

Instead, the role of religion in politics generally should be limited to worldly religious purposes. Worldly religious purposes are grounded in spiritual beliefs, typically beliefs concerning the will of God, but their immediate concern is non-spiritual human behavior in the physical world. Thus, for example, to honor God's will by restricting abortion or by adopting regulations to protect the environment would be to further worldly religious purposes. Here, political action may be essential, because worldly purposes may be difficult or impossible to accomplish through purely private means. Although dissenting citizens may be offended by the resulting government policies, the insult here is not gratuitous, and the First Amendment therefore should not be read to preclude this type of religiously motivated political action. Indeed, given the historical and contemporary status of religion in our society, as well as the political implications of common religious beliefs,⁴⁰ it would be absurd to suggest that religious citizens should not be permitted to use politics and law in the advancement of worldly purposes that are informed by their religious values.⁴¹

Although the line between spiritual and worldly religious purposes can be difficult to draw, the distinction is important, because it provides a basis for simplifying the normative comparison of religious

are supported by historical tradition, as well as certain government actions that "accommodate" the free exercise of religion. On historical tradition, see Conkle, 82 Nw U L Rev at 1183-87 (cited in note 38). On accommodation, the most prominent academic spokesman is Professor Michael W. McConnell. Professor McConnell explains and defends the concept, and addresses its critics, in Michael W. McConnell, *Accommodation of Religion*, 1985 Sup Ct Rev 1; Michael W. McConnell, *Accommodation of Religion: An Update and a Response to the Critics*, 60 Geo Wash L Rev 685 (1992).

40. As Dean M. Kelley has explained, "the formative religious traditions of the Western world—Judaism and Christianity—have for millennia embraced the conviction that their religious duty entailed active intervention in the 'body politic.'" Dean M. Kelley, *The Rationale for the Involvement of Religion in the Body Politic*, in James E. Wood, Jr., and Derek Davis, eds, *The Role of Religion in the Making of Public Policy* 159, 168 (Baylor U Press, 1991). As a result, "churches and synagogues can no more be silent on public issues than human beings can refrain from breathing." Id at 188. See also Perry, *Love and Power* at 81 (cited in note 36) (discussing "the essentially political nature of religion").

41. But compare Bruce A. Ackerman, *Social Justice in the Liberal State* 10 (Yale Univ Press, 1980) ("[N]obody has the right to vindicate political authority by asserting a privileged insight into the moral universe which is denied the rest of us."); Robert Audi, *The Separation of Church and State and the Obligations of Citizenship*, 18 Phil & Pub Aff 259, 284 (1989) ("[O]ne should not advocate or promote any legal or public policy restrictions on human conduct unless one not only has and is willing to offer, but is also motivated by, adequate secular reason, where this reason (or set of reasons) is motivationally sufficient for the conduct in question.") (emphasis in original).

traditions. Based on this distinction, differences in spiritual visions or practices, including the rituals of worship, are not directly relevant to the inquiry. Some of these differences might be indirectly relevant, for they might influence the religious believers' perspectives on worldly matters.⁴² In the main, however, we can put aside spiritual differences and limit ourselves to differences that affect worldly concerns.

Although the proper role of religion in politics generally is limited to worldly concerns, and also is limited by other First Amendment restrictions, this leaves a broad range of religiously motivated political action that is constitutionally permissible. Within these broad constitutional limits, what kinds of religious involvement should we praise? What kinds should we criticize? How should policy makers and citizens evaluate religious arguments that relate to matters of public policy? Which religious traditions play a valuable political role, and which do not?

In addressing these questions, we can compare and contrast American religions on at least three dimensions: "procedural," "structural," and "substantive." The "procedural" character of a religion is its method of thought. The "structural" dimension of a religion refers to the religion's basic orientation toward society, politics, and law. And the "substantive" analysis of religious thinking addresses the religion's substantive positions on political and moral issues. I will address each of these dimensions in turn.

A. Procedural Criteria of Evaluation

The "procedural" character of a religion is its method of thought; that is, the manner or means by which it determines the nature of truth, including political and moral truth. This dimension embraces questions about the legitimate source or sources of truth and about the role of argument and dialogue, both within and outside the community of believers.

On this dimension, American religions can be classified into three basic groups. At one end stand the "fundamentalists." At the other, the "modernists." And in the middle are the "reconcilers." In fact, there are not merely three groups, but rather a continuum that moves from one extreme to the other. To understand this continuum, however, we first must understand its end points. In my depictions of

42. Professor Mark Tushnet, for example, has argued that the Christian belief in eternal life permits a philosophical anthropology that Jews might be unable to accept. See Mark Tushnet, *Flourishing and the Problem of Evil*, 63 Tul L Rev 1631, 1649-50 (1989).

fundamentalism and modernism, therefore, I deliberately describe these types of religion in their most extreme variants, recognizing that their characteristics actually are a matter of degree.

1. Religious Fundamentalists

When I speak of "fundamentalists," I refer not merely to Protestant Fundamentalists, but also to other religious believers, Christian and non-Christian, who embrace similar views about the nature of truth. Whatever their particular faiths or denominations, fundamentalists regard their religious text (or other religious authority⁴³) as a source of truth that is absolute, plain, and unchangeable. This source of truth is absolute in the sense that it cannot be questioned on the basis of external evidence or arguments. It is plain in the sense that it requires little if any interpretation. It is unchangeable in the sense that it need not be adapted to contemporary circumstances.

On this understanding, fundamentalism is a matter of degree. Certain Biblical literalists, for example, virtually close their minds to competing sources of truth, such as modern science and philosophy, and view the Bible as a clear moral code that requires no contemporary interpretation. According to the Rev. Jerry Falwell, for example, "[t]he Bible is absolutely infallible, without error in all matters pertaining to faith and practice, as well as in areas such as geography, science, history, etc. The disintegration of our social order can be easily explained. Men and women are disobeying the clear instructions God gave in His Word."⁴⁴ Many Protestant Fundamentalists believe "that every word of scripture (often as found in the King James Version) is to be taken at face value."⁴⁵ "[B]ecause God is the timeless author of every word and story, the Bible need not be interpreted in a historical or literary context. Each word is equally valid, and each sentence is equally timeless and useful."⁴⁶

Other religious believers may have less extreme fundamentalist tendencies, or may be fundamentalist in some respects but not in others. A large number of American Protestants have fundamentalist

43. In addition to religious texts, fundamentalists, as well as other religious believers, might invoke other religious sources, such as direct revelations or the statements of contemporary religious leaders. For convenience, I will focus on religious texts, which are the most commonly invoked religious sources of truth.

44. Jerry Falwell, *Listen, America!* 63 (Doubleday, 1980).

45. Nancy Tatom Ammerman, *Bible Believers: Fundamentalists in the Modern World* 5 (Rutgers U Press, 1987).

46. *Id.* at 51. See also James Davison Hunter, *Evangelicalism: The Coming Generation* 20-21 (U Chicago Press, 1987).

tendencies. Similar tendencies can be found in conservative Roman Catholics and Orthodox Jews, among others.⁴⁷

We should be wary of fundamentalist involvement in the political process. Regardless of the substantive position being advanced, fundamentalist politics violate a core tenet of our democratic system—that legal policies should be formulated on the basis of a dialogic decision-making process, a process requiring an openness of mind that fundamentalism does not allow.⁴⁸

Our contemporary system of government and laws has intellectual roots in reason as well as religion. The Founders were overwhelmingly religious, but they also were deeply influenced by the Enlightenment. The Enlightenment taught that divine revelation could not establish truths that were contrary to reason. To many Enlightenment thinkers, however, revelation remained an important supplement to reason, and religion and reason therefore played complementary roles in the search for truth.⁴⁹ Under this view, religion was not antagonistic to the Enlightenment unless the religion was itself beyond the testing of reason. This was the dominant view of the Founders.⁵⁰

More generally, as scholars recently have emphasized, the Founders were influenced by republican as well as liberal political theory. Just as the Enlightenment emphasized the importance of reason, republican theory called for the use of reasoned inquiry and debate in the formulation of government policies. Unlike the liberal model of competing interest groups, the republican model urged a deliberative

47. According to survey data, approximately a third of the American people believe that the Bible is the "actual word of God and is to be taken literally, word for word." Ammerman, *Bible Believers* at 6 (cited in note 45) (40%); George Gallup, Jr., *Religion in America* 47 (The Gallup Report No. 236, May 1985) (37%); *Fewer Biblical Literalists*, 109 *Christian Cent* 295 (1992) (32%). According to the Princeton Religious Research Center, the percentage of Biblical literalists has declined in recent decades, having been as high as 65% in 1963. See *Fewer Biblical Literalists* (cited above).

48. This argument about the importance of dialogic decision-making is drawn from Conkle, 67 *Ind L J* at 12-13 (cited in note 1). There I make a stronger—and more problematic—claim than I am advancing here. In particular, there I suggest an interpretation of the Establishment Clause under which laws inspired by religious fundamentalism may sometimes be unconstitutional. My argument here, by contrast, does not depend on that interpretation of the Establishment Clause. To the contrary, here I am assuming that that interpretation is or should be rejected.

49. See Henry F. May, *The Enlightenment in America* at xiv (Oxford U Press, 1976).

50. James Madison, for example, represented "the center of the American religious spectrum." *Id.* at 96. "He arrived at a consistent, lifelong defense of Christianity on the basis both of reason and intuition, shifting gradually like many contemporaries from the first to the second." *Id.*

politics that would search for the public good.⁵¹

These themes of the Enlightenment and republicanism continue to influence our scheme of constitutional democracy. One obviously cannot deny the powerful roles of liberal theory and interest group politics. Nonetheless, even in the context of interest group politics, we expect legislators and other officials to respond to argument as well as political pressure. We expect them to give reasons for their decisions,⁵² and the potential for reasoned debate and criticism is always present. That potential serves as an important check on political bargains that are ill-advised and contrary to the public good. Indeed, our modern Constitution exudes a general principle forbidding unreasoned government policies, policies that amount to "naked preferences."⁵³

Reasoned decision-making demands a deliberative, dialogic decision-making process, a process that at least permits the possibility that argument will lead to a change of mind.⁵⁴ Fundamentalism denies this premise, opting instead to rely on a source of truth that is viewed as absolute, plain, and unchangeable, and therefore beyond challenge or debate. As a result, fundamentalism's contributions to our public life are appropriately viewed with skepticism.⁵⁵

51. See Cass R. Sunstein, *Beyond the Republican Revival*, 97 Yale L J 1539, 1548-51 (1988); Cass R. Sunstein, *Interest Groups in American Public Law*, 38 Stan L Rev 29, 45-48 (1985). Republican theory, of course, is far more complex and diverse than my capsule summary might suggest. See generally Frank I. Michelman, *The Supreme Court, 1985 Term—Foreword: Traces of Self-Government*, 100 Harv L Rev 4 (1986); *Symposium: The Republican Civic Tradition*, 97 Yale L J 1493 (1988).

52. Even if those reasons might be drawn from the arguments of interest group lobbyists.

53. Cass R. Sunstein, *Naked Preferences and the Constitution*, 84 Colum L Rev 1689 (1984).

54. It may seem ironic to prefer uncertainty to certitude in the lawmaking process. But the preference is only for a minimal sort of uncertainty; that is, a minimal willingness to consider contrary argument.

55. For a different argument reaching a similar conclusion, see Perry, *Love and Power* at 100-05 (cited in note 36) (discussing the importance of "fallibilism" and "pluralism" to the maintenance of an "ecumenical political dialogue"). See also *id.* at 139-41. For important critiques of Perry's position—critiques that could be extended at least in part to mine as well, see Sanford Levinson, *Religious Language and the Public Square*, 105 Harv L Rev 2061 (1992) (book review); David M. Smolin, *Regulating Religious and Cultural Conflict in a Postmodern America: A Response to Professor Perry*, 76 Iowa L Rev 1067 (1991) (book review). See generally Richard John Neuhaus, *Reason Public and Private: The Pannenberg Project*, First Things 55, 57 (Mar 1992) ("So long as Christian teaching claims to be a privileged form of discourse that is exempt from the scrutiny of critical reason, it will understandably be denied a place in discussions that are authentically public.").

It may be that secular thinking can take on fundamentalist characteristics. Compare Carter, 64 Notre Dame L Rev at 942 (cited in note 31) (suggesting that nonreligious as well as

2. Religious Modernists

At the other end of the American religious spectrum stand the religious "modernists." Modernists regard their religious text as a source of truth, but one that is neither absolute nor plain, nor unchangeable in its meaning. Much to the contrary, modernists embrace reason and rationalism as their dominant sources of truth. They fully accept modern science and philosophy, and they liberally interpret their religious text to keep pace with changes in the society.

As with fundamentalism, modernism is a matter of degree, and the classification of particular religions is difficult. Historically, one thinks of Deism as a classic example of modernist, rationalist religion. Today, modernist tendencies are strong among various religions, including the mainline Protestant denominations and at least certain strands of Judaism.

A recent example of modernist thinking comes from within my own Presbyterian Church (U.S.A.). In a highly-publicized report, a committee of Presbyterians recommended that traditional strictures against nonmarital sexual relations be abandoned.⁵⁶ Although it claimed to rely on scripture as a central source of truth, the report embraced a "hermeneutical spiral" that placed great emphasis on current societal circumstances,⁵⁷ including the "significant . . . gap [that] now exists between official church teachings and the sexual practices of most people, including many church members."⁵⁸ Downplaying specific Biblical passages in favor of "the broad message of Scripture,"⁵⁹ the committee essentially reduced the Bible's message to a general ethic of "justice-love."⁶⁰ According to the committee's "interpretive guidelines," "Whatever in Scripture, tradition, reason, or ex-

religious beliefs may be held in closed-minded fashion). If so, then the public role of this "secular fundamentalism" should also be viewed with skepticism.

In addition to the arguments that I have presented, there may be psychological and sociological reasons to be concerned about fundamentalist political involvement. For a provocative argument along these lines, see William P. Marshall, *The Other Side of Religion*, 44 *Hastings L J* 843 (1993).

56. See General Assembly Special Committee on Human Sexuality, Presbyterian Church (U.S.A.), *Keeping Body and Soul Together: Sexuality, Spirituality, and Social Justice* (1991) [hereinafter *Presbyterian Report*]. For media discussions of the report, see, for example, Jeffery L. Sheler, *The Gospel on Sex*, *US News & World Report* 58 (June 10, 1991); Peter Steinfelds, *Alter Law on Sex, Panel Asks Church*, *NY Times* A13 col 1 (Mar 1, 1991); Peter Steinfelds, *Sexuality Report Is Assailed at Hearing of Presbyterians*, *NY Times* A14 col 1 (June 7, 1991); Kenneth L. Woodward, *Roll Over John Calvin*, *Newsweek* 59 (May 6, 1991).

57. See *Presbyterian Report* at 22 (cited in note 56).

58. *Id.* at 10.

59. *Id.* at 22.

60. See, for example, *id.* at 14, 39, 41-46.

perience embodies genuine love and caring justice, that bears authority for us and commends an ethic to do likewise."⁶¹ Conversely, the committee continued, "Whatever in biblical tradition, church practice and teaching, human experience, and human reason violates God's commandment to do love and justice, that must be rejected as ethical authority."⁶² Liberated by these interpretive principles,⁶³ the committee was able to conclude that the church should "celebrate all sexual relations grounded in mutual respect, genuine care, and justice-love."⁶⁴

My focus here is not on the conclusion of the Presbyterian committee, but rather its method of thought. Clearly, this kind of modernist religious thinking can permissibly be brought to bear on political and legal questions, and, unlike with fundamentalism, there is no particular reason to oppose it. This kind of religious thinking is broadly open to dialogue, both within and outside the religious community. It takes full account of contemporary societal practices and various kinds of nonreligious thought. Although it is animated by a general vision of the divine, it otherwise is similar to nonreligious philosophy. Indeed, much of the Presbyterian report could easily have been written by a secular philosopher.

We should not regard modernist religious politics as problematic, anymore than we regard ordinary secular politics as problematic. But neither is this religious involvement a type that we should especially praise. America has an ample supply of secular philosophy and secular politics. What religion can provide is a transcendent, nonsecular source of truth, a source of truth that reaches beyond the harm principle of John Stuart Mill and beyond the clashes of interest-group politics. Religion can permit a deeper politics that wrestles not merely with immediate, practical questions, but also with the meaning of life, both for individuals and for the political community of which they are a part. For religion to fulfill this mission, however, it must stand not

61. *Id.* at 27.

62. *Id.*

63. Notice that the committee's first interpretive principle refers to the selective use of "Scripture," whereas its second principle calls for the selective rejection not of "Scripture," but rather of "biblical tradition." However modernist the committee's report, it seems that the committee was reluctant to call for the rejection of Scripture as such.

64. *Id.* at 39. The committee's report was overwhelmingly rejected by the General Assembly of the Presbyterian Church (U.S.A.). See Peter Steinfelds, *Presbyterians Reject Report on Sex*, *NY Times* A18 col 1 (June 11, 1991). The General Assembly instead approved a pastoral letter that affirmed the authority of the Bible and the "sanctity of the marriage covenant between one man and one woman to be a God-given relationship to be honored by marital fidelity." See *id.*

only within, but also above, the contemporary society and the secular arguments of the day. It must provide its adherents with a meaningful sense of identity, both as individuals and as a religious people. This in turn requires that the religious tradition have a significant and distinctive meaning. Modernists have little to offer American public life because they offer little that is distinctively religious. Theirs is a "living tradition" to the point that their tradition hardly lives.

3. Religious Reconcilers

Between the fundamentalists and the modernists, somewhere near the middle of the American religious spectrum, is the group I call the "reconcilers." Unlike the fundamentalists, the reconcilers do not regard their religious text as a source of truth that is absolute, plain, and unchangeable. But they take the text far more seriously than the modernists. They consider the text a critical source, if not absolute, and they do not lightly ignore bothersome passages that modernist interpreters would disregard as out-of-date or as inconsistent with the "broad message" of the text. The reconcilers take their religious text as a significant and independent source of truth, one that may be at odds with competing secular sources. At the same time, they confront those secular sources, placing them in dialogue with their religious text. Likewise, they consider the changing condition of the society for its impact on their religious understanding, thereby following a type of "hermeneutical spiral." The task of the reconcilers is to reconcile—to bring into harmony or agreement—the competing sources of truth that they confront. The reconcilers' religious tradition therefore is a living tradition, but it is one that emphasizes the tradition.

Here again, the classification of particular religions is not easy. There is no bright line separating the reconcilers from the fundamentalists, on the one hand, or from the modernists, on the other. Some reconcilers lean toward fundamentalism; others toward modernism.⁶⁵

65. Professor Michael J. Perry's account of religion, for example, suggests a type of reconciler religion that leans in the modernist direction. "[T]he best theology of any period," according to Perry, "speak[s] in a new voice, a voice of the present and accessible to the present" and "mediate[s] . . . the faith of the community in terms commensurate with what is deeply authoritative for the present, especially the reflective common sense of the present and the widely accepted yield of contemporary intellectual inquiry." Perry, *Love and Power* at 75 (cited in note 36).

Professor Thomas L. Shaffer is another religious reconciler, one who is perhaps more centrist than Perry. In addressing the professional role of lawyers, Shaffer makes extensive use of Biblical teachings, especially those of the New Testament. Thomas L. Shaffer, *On Being a Christian and a Lawyer: Law for the Innocent* (Brigham Young U Press, 1981). But as one of

Despite the difficulties of classification, however, it seems clear that many mainline Protestants are reconcilers, as are many Roman Catholics and Jews.

A classic example of reconciler theology is that of the Protestant Neo-Orthodoxy Movement, which was prominent earlier in this century, but which continues to influence American Protestantism.⁶⁶ Exemplified in the United States by the work of Reinhold Niebuhr,⁶⁷ Neo-Orthodox Theology steered a middle course between fundamentalism and religious modernism. Unlike fundamentalism, Neo-Orthodoxy embraced modern science and accepted higher criticism of the Bible. It read the Bible as the record of God's people in history. Although inspired by God and therefore the Word of God, it was written by imperfect human beings. On this understanding, Neo-Orthodoxy rejected fundamentalism's strict conceptions of Biblical inerrancy and Biblical literalism.

Unlike religious modernists, however, Neo-Orthodox thinkers saw no diminishing role for the Bible. Much to the contrary, "Neo-Orthodoxy grew out of a passionate engagement with the Bible,"⁶⁸ which was viewed as a unique source of knowledge not only about God and Christ, but also about human nature. Neo-Orthodoxy's reading of the Bible, moreover, revealed a human nature plagued by sin and in need of divine forgiveness and grace. The sovereignty of God, however, did not eliminate the responsibility of human beings to work for practical, working solutions to the problems of the day, solu-

his central points, Shaffer argues that lawyers should follow "the ethics of care," an ethical approach that emphasizes the importance of moral discourse and openness to change. *Id.* at 21-33.

In addressing the problems that they see in contemporary American institutions, Professor Robert N. Bellah and his co-authors seem also to support some version of reconciler religion. See Robert N. Bellah, et al, *The Good Society* (Knopf, 1991). Among their other arguments, Bellah and his colleagues claim that Biblical religion can help us address "the ultimate problem of meaning." *Id.* at 218. They endorse the use of the Bible as "a *working document* that doesn't give us pat answers but helps us struggle to make sense of the abyss that so often seems to be opening up around us." *Id.* at 219 (emphasis in original). On this view, "the Bible can speak to us today only if we do the hard work of making sense of it and seeing how it applies to our current situation." *Id.*

66. For an excellent introduction, see Dennis N. Voskuil, *Neo-Orthodoxy*, in Charles H. Lippy and Peter W. Williams, eds, 2 *Encyclopedia of the American Religious Experience: Studies of Traditions and Movements* 1147-57 (Charles Scribner's Sons, 1988).

67. Representative of Niebuhr's many important works are *The Nature and Destiny of Man: A Christian Interpretation* (Charles Scribner's Sons, 1949); *Moral Man and Immoral Society: A Study in Ethics and Politics* (Charles Scribner's Sons, 1932). The general themes that I discuss in the text run throughout Niebuhr's writings.

68. James C. Livingston, *Neo-Orthodoxy*, in William H. Gentz, ed, *The Dictionary of Bible and Religion* 733, 734 (Abingdon, 1986).

tions that would further God's will for humankind. Neo-Orthodox thinkers took a tragic view of history, but one that was not without guarded hope for human progress. "Americans, in a word, could not build the Kingdom of God on earth; but they could strive for imperfect, proximate goals dimly mirroring the transcendent ideal."⁶⁹

Regardless of the specifics of its theology and regardless of its specific political implications, Neo-Orthodox thinking provides an excellent model of reconciler religion. It avoids both the rigidity of fundamentalism and the barrenness of religious modernism. Being willing to confront competing sources of truth, reconciler religion does not reject America's commitment to deliberative, dialogic decision-making. At the same time, it offers a genuinely non-secular source of truth, a source of transcendent judgment. Religious reconcilers have the potential for enhancing, elevating, and perhaps even ennobling American public life.⁷⁰ We therefore should applaud and encourage their involvement in politics and their attempts to influence the law.⁷¹

69. James H. Moorhead, *Theological Interpretations and Critiques of American Society and Culture*, in 1 *Encyclopedia of the American Religious Experience*, at 101, 113 (cited in note 66) (describing the position of Reinhold Niebuhr).

70. In contemporary America, reconciler religion seems far less prominent than either fundamentalism or religious modernism. See James Davison Hunter, *Culture Wars: The Struggle to Define America* (BasicBooks, 1991); Wuthnow, *The Restructuring of American Religion* (cited in note 29). "In part what has happened," observes Professor Robert N. Bellah, "is that we have lost the middle ground and the voices, such as that of Reinhold Niebuhr and John Courtney Murray, who could articulate it." Robert N. Bellah, *Small Face-to-Face Christian Communities in a Mean-Spirited and Polarized Society*, New Oxford Rev 17, 19 (June 1992). If my argument here is sound, it is important to bring reconciler religion back to the forefront, a process that may require the retrieval or rejuvenation of religious traditions such as Neo-Orthodoxy. For a sophisticated recent effort along these lines, see Glenn E. Tinder, *The Political Meaning of Christianity: An Interpretation* (La St U Press, 1989).

Working from what I would call a reconciler perspective, Professors Elizabeth Mensch and Alan Freeman have attempted to retrieve theological arguments from earlier in this century, including Neo-Orthodox as well as natural law arguments, as they relate to the issue of abortion. See Elizabeth Mensch and Alan Freeman, *The Politics of Virtue: Is Abortion Debatable?* (Duke U Press, 1993).

71. It may be that further conditions or standards, in some sense "procedural" in nature, should also be satisfied before we applaud and encourage the political activity of religious reconcilers or other religious believers. Professors Kent Greenawalt and Michael J. Perry, among others, recently have offered some suggestions.

Professor Greenawalt argues that in making political choices, citizens and lawmakers should rely on religious reasons only if nonreligious, "publicly accessible" reasons—"reasons whose relevance is generally acknowledged"—are inadequate to resolve the issue in question. Kent Greenawalt, *Religious Convictions and Political Choice* 24 (Oxford U Press, 1988); see also id at 56-76. As Greenawalt explains, however, "publicly accessible" reasons are inadequate to resolve many of our most important and most contentious questions of public policy, and this condition therefore leaves much room for religiously motivated politics and lawmaking. See id at 98-202. Even so, Greenawalt also argues that religious believers generally should cast their political arguments in secular terms, although he offers a number of signifi-

B. Structural Criteria of Evaluation

The "structural" dimension of religious thought refers to the religion's basic orientation toward society, politics, and law. The focus here is on a number of interrelated questions. First, does the religion embrace or reject modernity? Second, is its focus primarily spiritual or worldly? Third, does it attempt to isolate its community of believers from the general society around it, or does it participate in and attempt to influence that general society? Finally, if it participates in the general society, does it act as a political insider or does it act more as a critical outsider, akin to a Biblical prophet?⁷²

1. Relation to Modernity

The first structural question concerns the religion's relation to

cant exceptions to this proposition. See *id.* at 215-30. For Greenawalt's most recent explication of his views, see Kent Greenawalt, *Religious Convictions and Political Choice: Some Further Thoughts*, 39 DePaul L. Rev. 1019 (1990). Compare Mark Tushnet, *The Limits of the Involvement of Religion in the Body Politic*, in Wood and Davis, eds., *The Role of Religion in the Making of Public Policy*, at 191-220 (cited in note 40) (arguing that it is permissible for lawmakers to rely on religious reasons, but only if the laws they adopt are independently justifiable on secular grounds).

Professor Perry criticizes Greenawalt's position, including especially Greenawalt's general preference for arguments cast in secular terms. See Perry, *Love and Power* at 16-22 (cited in note 36). Perry offers his own suggested conditions or standards for an "ecumenical political dialogue" that would include religiously-grounded public discourse. His "situational or contextual" prerequisites include a common political-moral language grounded on a set of shared normative premises. See *id.* at 84-98. His "existential" prerequisites for persons engaging in this dialogue include cognitive competency, respect for interlocutors, honesty and sincerity, the "attitudes" of "fallibilism" and "pluralism," and the "dialogic virtues" of "public intelligibility and public accessibility." See *id.* at 99-112. Compare Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* 172 (Free Press, 1991) ("political speech has to be intelligible to a wide assortment of individuals who increasingly share few referents in the form of common customs, literature, religion, or history"); *id.* at 181-82 (discussing the possibility of "translating" particular religious discourses without a loss of religious distinctiveness).

72. H. Richard Niebuhr addressed similar questions in his classic work, *Christ and Culture*, in which he identified five types of Christian approaches to the relationship between Christ and culture. See H. Richard Niebuhr, *Christ and Culture* (Harper & Bros., 1951). Although he addressed pre-modern as well as modern periods, and although he focused exclusively on Christianity, there are affinities between Niebuhr's categories and the discussion that follows. At the risk of oversimplification, Niebuhr's models of "Christ Against Culture" and "The Christ of Culture" are to some extent analogous, in the modern period, to what I call fundamentalist and modernist responses to modernity. The "Christ Against Culture" model also includes a strong isolationist tendency. Niebuhr's remaining three models—"Christ Above Culture," "Christ and Culture in Paradox," and "Christ the Transformer of Culture"—can be seen as examples of reconciler religion.

Using Niebuhr's typology as her starting point, Professor Angela C. Carmella has argued that an appreciation of the variety of religious approaches to culture could help inform our understanding of the First Amendment's religion clauses. See Angela C. Carmella, *A Theological Critique of Free Exercise Jurisprudence*, 60 Geo. Wash. L. Rev. 782 (1992).

modernity, including modern ways of thought and modern ways of living. Modern ways of thought include modern science as well as modern philosophy, which is primarily secular in nature. Modern ways of living include a heavy reliance on the technologies provided by science, as well as a generally individualistic mode of existence. This mode of existence follows the dominant (but not exclusive) political philosophy of the day, that of liberal political theory.⁷³

Religious responses to modernity can be described as fundamentalist, modernist, and reconciler. As before, these three categories actually are matters of degree, properly placed on a continuum that runs from fundamentalism at one end to modernism at the other. At the extremes, fundamentalists resist modernity,⁷⁴ and religious modernists embrace it. In the middle, reconcilers move with caution, attempting to maintain their religious tradition even as they confront modernity.

Given my previous discussion, these classifications are not surprising, for a religion's structural response to modernity is likely to follow from its procedural position concerning the nature and sources of truth. Procedural fundamentalists, for example, are apt to reject modern ways that conflict with a literal reading of their religious text. Even so, the structural question is different from the procedural one. Its focus is more concrete. In particular, the concern here is not one of general epistemology, but rather the religion's practical stance on the various manifestations of modern thought and modern life.⁷⁵

At this structural level, as on the procedural dimension discussed earlier, we should prefer the political involvement of religious reconcilers to that of either fundamentalists or religious modernists. Fundamentalists' resistance to modernity leads them to ignore or deny major developments in modern life, including not only scientific advances, but also cultural changes, such as the changing role of women in our society. Political arguments that proceed from fundamentalist premises therefore tend to be detached and disconnected from the

73. See above, notes 32, 51-54, and accompanying text (discussing liberal and republican political theory).

74. American Protestant Fundamentalism, for example, arose from a militant opposition to modernity. See George M. Marsden, *Fundamentalism and American Culture: The Shaping of Twentieth-Century Evangelicalism: 1870-1925* (Oxford U Press, 1980).

75. A religion may respond differently to different manifestations of modern thought and modern life. Thus, in this structural sense, a religion may be fundamentalist on certain matters, but modernist on others. Many of the prominent televangelists, for example, preach a message that is fundamentalist in many respects, but they do so through a sophisticated use of modern technology.

modern reality that others experience. As such, these arguments simply do not join issue in the political dialogue of the broader society.

Religious modernism's embrace of modernity makes it equally unhelpful. In a recent encyclical, Pope John Paul properly condemned not only the modern world's "soulless economic and technical development,"⁷⁶ but also the modernist religious thinking that seems to be captivated, if not dominated, by modern science and secular philosophy. His comments about Christianity could be extended to religion generally: "The temptation today," he wrote, "is to reduce Christianity to merely human wisdom, a pseudo-science of well-being."⁷⁷ Who needs it?

A group of United Methodists recently issued a statement concerning abortion.⁷⁸ Of interest here is not the group's substantive conclusions, but rather its rejection of the modernist bias that the group described as prevalent in the United Methodist Church. This bias suggests a structural orientation that is all too ready to adopt modern ways of life and modern ways of thinking. "We have capitulated to extreme self-involvement and self-interest," they wrote, "treat[ing] matters related to marriage, sex, and children as if they were merely lifestyle questions" and "liv[ing] as if the church is simply another voluntary association of autonomous individuals."⁷⁹ Rejecting the tendency "to debate abortion with the merely political terms that American society has made available," the group worked from explicitly religious premises, including, for example, the proposition that God owns our selves and our bodies.⁸⁰ Acting as religious reconcilers, these Methodists did not deny the reality of modernity, but they tested that reality against the specific normative claims of their religious tradition. Whether or not successful in this particular instance, such an effort offers far more than either fundamentalism or religious modernism can hope to provide.

2. Spiritual or Worldly Focus

The second structural question asks whether the religion emphasizes spiritual or worldly concerns. Here again, there is a range of possible positions, running from one extreme to the other. At one end

76. Marlise Simons, *Pope Is Urging Drive for Converts, Even Where Muslims Prohibit It*, NY Times A2 col 3 (Jan 23, 1991).

77. *Id.*

78. *The Durham Declaration: To United Methodists on Our Church and Abortion*, New Oxford Rev 23 (May 1991).

79. *Id.* at 24.

80. *Id.* at 23.

are religious believers who focus not on this world but the next. To the extent that they do have concerns about the state of this world, moreover, they are not likely to call for human action. Instead, they are likely to await or to request divine intervention. Premillennial Christians, for example, may see little hope for this world until Christ returns in a dramatic Second Coming; in the meantime, individuals should concentrate on attaining eternal life.⁸¹ At the other end of the spectrum are religious believers who focus primarily on this world, either rejecting or downplaying the possibility of life after death and the possibility of divine intervention. Many American Jews, among others, may fit this pattern. In the middle of the spectrum are most American Protestants and Roman Catholics, who believe in life after death and the possibility of divine intervention, but who concentrate their energies on what humans can accomplish during the course of their physical lives.

For obvious reasons, a religion's spiritual or worldly orientation will affect its role in American public life. As discussed previously, the First Amendment generally will preclude any attempt to use the law or other government action to directly advance spiritual ends, as, for example, in a collective prayer for divine intervention.⁸² More generally, those who focus on another world, especially those who look forward to eternal life for themselves and for fellow believers, may feel less incentive to address political and social issues in the world they now inhabit.⁸³ As a result, religions with a predominantly spiritual outlook may have less to offer American public life than those with a more worldly focus. Aside from a few extreme groups, however, most American religions include a substantial focus on worldly concerns. This structural consideration, therefore, is not likely to exclude many religions from a significant political role.

3. Isolationist or Participatory

The third structural question is similar in this respect. This question asks whether the religious group isolates its community of believers from the general society around it, or instead participates in and attempts to influence that general society. The Old Order Amish are

81. This kind of premillennialism was a prominent theme in the development of American Protestant Fundamentalism. See Ernest R. Sandeen, *The Roots of Fundamentalism: British and American Millenarianism 1800-1930* (U Chicago Press, 1970).

82. See above, notes 38-41 and accompanying text.

83. Compare H. Richard Niebuhr, *Christ and Culture* at 6 (cited in note 72) (Christianity can direct individuals' "hopes toward another world, and so seem to deprive them of motivation" either to conserve or to change their existing social circumstances).

a classic example of the former kind of religious group. An isolationist religion may focus on worldly concerns within the religious community, but it is unlikely to have a significant influence on general public policy.⁸⁴ In the United States today, however, there are relatively few religious believers who choose to isolate themselves in the manner of the Amish. Thus, this third structural factor, much like the second, will prevent only a small number of religions from exercising a meaningful role in American public affairs.

4. Political Insider or Prophetic Outsider

Assuming a religion does attempt to influence the general society, the fourth and final structural question asks whether the religious believers act as political insiders or as critical outsiders. Political insiders act within the political system, forming policy and exercising power in the give and take of ordinary politics. Political outsiders play a more prophetic role, standing apart from ordinary politics and exerting influence through criticism that calls the society and its government to judgment.

Historically, religion has played both insider and outsider roles in American politics. The insider role was central in earlier periods, as evidenced by the Christian dominance that I discussed previously.⁸⁵ Even today, despite the trends of privatization and secularization, religion continues to play a role inside the political system, albeit a role that many regard with suspicion and distrust. In recent decades, a number of ministers, including especially Black Protestants, have become political candidates, and many have been elected to office.⁸⁶ Religious lobbies attempt to influence Congress.⁸⁷ More generally, there is evidence that most of our elected officials are religious and that—although they might not admit it publicly—their reli-

84. On the other hand, it may well have an influence on questions of religious freedom. See, e.g., *Wisconsin v Yoder*, 406 US 205 (1972) (exempting Amish from compulsory school-attendance law).

85. See above, notes 11-17 and accompanying text.

86. Prominent examples of Black minister-politicians include Adam Clayton Powell, Jr., Walter Fauntroy, Andrew Young, William Gray, Floyd Flake, and Jesse Jackson. A large number of other Black clergy have pursued or been elected to less visible offices, often at the state or local level. In addition, Black clergy often make individual or collective endorsements of political candidates and facilitate the use of Black churches as a source for campaign funds. See R. Drew Smith, *Afro-American Protestants and the New Systemic Black Politics* 3-6 (1991) (unpublished manuscript on file with author).

87. See Allen D. Hertzke, *Representing God in Washington: The Role of Religious Lobbies in the American Polity* (U Tenn Press, 1988).

gious beliefs influence their political positions and votes.⁸⁸

The role of religious outsider also is common in American politics,⁸⁹ although this role, too, has come to be viewed with skepticism. Outsiders act as prophetic critics, not as wielders of political power. Although their views may eventually be accepted by the society, they at least begin their work as political dissenters, often engaging in acts of protest or civil disobedience. These religious critics may be progressive in their political views, as, for example, in the Social Gospel Movement of the late 1800s and early 1900s⁹⁰ and in the Civil Rights Movement of the 1950s and 1960s. They may also be conservative, as in the Pro-Life Movement of the 1980s and 1990s. Whether progressive or conservative, religious outsiders stand apart from the political orthodoxy of the day and call the society to what they regard as a higher standard of judgment.

This prophetic tradition in American political affairs is exemplified by the work of the Rev. Martin Luther King, Jr., a Baptist minister. Facing a segregated society grounded on white supremacy, King emerged from the Black church to become the principal leader of the Civil Rights Movement. Relying heavily on Christian theology, King led acts of protest and civil disobedience, preaching a message of non-violent resistance to segregation. In his famous "Letter from Birmingham Jail," King argued that segregation was "morally wrong and sinful,"⁹¹ and that the laws on which it was based were unjust laws that must be disobeyed. "One who breaks an unjust law," he added, "must do so openly, lovingly, and with a willingness to accept the penalty."⁹² King took pride in being an outsider, even an "extremist" of sorts, noting that "Jesus Christ . . . was an extremist for love, truth and goodness."⁹³

Contrary to what skeptics believe, there is room in American politics for both insider and outsider religious involvement. Both types of religious involvement can and should enrich the public morality of our society. Even so, it is important to note that insider in-

88. See Peter L. Benson and Dorothy L. Williams, *Religion on Capitol Hill: Myths and Realities* (Harper & Row, 1982).

89. For a general study of religious outsiders in American history, see R. Laurence Moore, *Religious Outsiders and the Making of Americans* (Oxford U Press, 1986).

90. See Charles Howard Hopkins, *The Rise of the Social Gospel in American Protestantism 1865-1915* (Yale U Press, 1940).

91. Martin Luther King, Jr., *Letter from Birmingham Jail*, in *Why We Can't Wait* 76, 85 (Harper & Row, 1964).

92. *Id.* at 86.

93. *Id.* at 92.

vovement carries the risk of diluting the religious message and thereby undermining its meaning. In the case of Black Protestantism, for example, Professor R. Drew Smith has argued that the church and its ministers have moved from the prophetic role exemplified by Martin Luther King to a role of political insider.⁹⁴ Smith contends that this transformation has led increasingly to an alignment more with prevailing political interests than with the Black underclass. This new alignment, according to Smith, has "great potential for trivializing . . . larger theological and institutional purposes held sacred by black Protestants" and "risks reducing the church to little more than an auxiliary of the state and clergy to scarcely more than state functionaries."⁹⁵ More generally, insider religious involvement can sanction a "normal religion" that avoids the uncomfortable implications of a genuine religious faith.⁹⁶

C. Substantive Criteria of Evaluation

I have been arguing that the principle of religious equality, as applied to the role of religion in public life, has led us to treat religion as a matter of individual taste and therefore a public irrelevancy. To combat the resultant privatization of religion and secularization of public discourse, I have suggested that we need to challenge the principle of religious equality through a normative comparison of various religions.

Thus far, I have compared and contrasted religions not on the basis of their substantive positions on public issues, but rather on the basis of more general procedural and structural factors. To recapitulate, the first structural factor, as well as the procedural dimension discussed previously, indicates that those religions with the most to offer American public life are reconciler as opposed to fundamentalist or modernist religions. According to the second and third structural factors, the religions that play a meaningful public role will be religions that have a substantial concern about worldly matters and that participate in and attempt to influence the general society. Finally, based on the fourth structural factor, religious believers may usefully participate either as political insiders or as prophetic outsiders, but if they participate as insiders, they should beware the risk of having

94. See Smith, *Afro-American Protestants and the New Systemic Black Politics* (cited in note 86).

95. *Id.* at 7.

96. See Milner S. Ball, *Normal Religion in America*, 4 Notre Dame J L Ethics & Pub Pol'y 397 (1990).

their religion neutralized, if not appropriated, by the secular political establishment.

These general factors provide a normative framework for evaluating religious contributions to politics and law. They do much of the work that is necessary for combatting the public leveling and resultant belittling of American religion. Indeed, my discussion of these factors takes the inquiry about as far as I am ready to take it.

Even so, my argument implies that there is ground yet to be traveled. I am arguing that religion should not be regarded as a public irrelevancy, that religious differences matter, and that some religions have more to offer American public life than do others. This argument implies that religion in the public sphere has truth value; more precisely, it implies that some religions have more truth value than others. In short, my argument suggests that at least some religiously informed public opinions are sound precisely because they are based upon religious beliefs that are sound. As a result, the task of comparing religions must ultimately include an evaluation of the substantive positions they advance, and this will inevitably include a theological evaluation. In conducting this analysis, one is asking, quite simply, whether a religion is right or wrong in its position on a particular political or moral issue.⁹⁷

Such a substantive inquiry is fraught with peril. Like other intrusions on the principle of religious equality, this kind of inquiry risks the slippery slope toward intolerance, as discussed at the outset of this essay.⁹⁸ Here, moreover, the inquiry is based not merely on the general characteristics of a religion, but rather its substantive positions. This more clearly implies a theological evaluation, which, if unfavorable, constitutes a theological challenge. Public challenges of this sort can be extremely hurtful to the individuals who hold the religious beliefs in question and can thereby be damaging to the political community itself.⁹⁹ But we are talking about religious beliefs that are being brought to bear on worldly concerns, on public issues facing the society as a whole. The hurt that accompanies these evaluations cannot be avoided. The only alternative is to reaffirm the principle of

97. Compare Neuhaus, *First Things* at 59 (cited in note 55) ("The question is whether the Christian message is *true*. And the testing of the truth of the matter must be in conversation with the ways in which we test the truth of other matters.") (emphasis in original); see generally Mortimer J. Adler, *Truth in Religion: The Plurality of Religions and the Unity of Truth* (Macmillan, 1990) (arguing that religious claims of truth can and should be evaluated in a manner similar to other claims of truth).

98. See above, text accompanying note 1.

99. See Conkle, 82 Nw U L Rev at 1164-69 (cited in note 38).

religious equality in this context, which is to reaffirm the course of privatization and secularization. But if one wishes to take another course, a course that views religion as a meaningful source of political and moral insight—a type of thought that has truth value—then the task of substantive evaluation is both appropriate and imperative.¹⁰⁰

The task of substantive evaluation must be conducted, but it should be conducted in a spirit that not only avoids religious intolerance, but that is sensitive to the pain that religious challenges can cause. Once again, reconciler religion may be especially well-suited to this undertaking. In its effort to reconcile religious text and tradition with the thinking and the circumstances of modern society, reconciler religion, by the very nature of its mission, tends to inspire a measure of religious humility. Describing his vision of what I have called reconciler religion, Reinhold Niebuhr wrote that “[p]rofound religion must recognize the difference between divine majesty and human creatureliness; between the unconditioned character of the divine and the conditioned character of all human enterprise.”¹⁰¹ Noting that “[r]eligious humility is in perfect accord with the presuppositions of a democratic society,”¹⁰² he added that “[r]eligious toleration through religiously inspired humility and charity is always a difficult achievement. It requires that religious convictions be sincerely and devoutly held while yet the sinful and finite corruptions of these convictions be humbly acknowledged; and the actual fruits of other faiths be generously estimated.”¹⁰³ At least in the public sphere, we cannot avoid the critical evaluation of competing religious claims. As Niebuhr suggested, however, we should proceed with humility and with caution as we undertake this task.

CONCLUSION

In this essay, I have contended that even as we glorify the private diversity and strength of American religion, the principle of religious equality has led us to treat religion in the public domain as generic and therefore insignificant. The resulting privatization of religion and secularization of public debate have devalued important religious in-

100. Compare Steven D. Smith, *The Restoration of Tolerance*, 78 Cal L Rev 305, 333 (1990) (arguing for a legal regime that is tolerant but not neutral, a “tolerant regime [that] does not assure dissenting citizens that it regards their beliefs as equally true or valuable”).

101. Reinhold Niebuhr, *The Children of Light and the Children of Darkness: A Vindication of Democracy and a Critique of its Traditional Defense* 135 (Charles Scribner's Sons, 1944).

102. *Id.*

103. *Id.* at 137.

sights concerning our public morality. To counteract these trends of privatization and secularization, I have argued that we must resist the principle of religious equality in this particular context, and I have offered various normative factors that can and should be used for comparing and contrasting different religions. My procedural and structural factors are general in nature, but in the end we must be willing to evaluate competing religions' particular substantive positions on matters of public concern, even if this includes a theological evaluation.

I have noted the public consequences of privatization and secularization, but these trends may have private repercussions as well. Although American religion appears to be vibrant in the private domain, there are signs of weakness, and this weakness is closely related to our public (mis)treatment of religion. According to an important recent study, for example, less than a third of American Protestants have an "integrated faith" that embraces not only religious beliefs as such, but also their practical implications in life.¹⁰⁴ "There is evidence of great hesitance to connect one's faith to one's community, work or politics," with religious believers "unsure how to go public in words or actions."¹⁰⁵ This hesitance leads to a faith that "is private and quiet, more in the head than the heart, hands and feet, uncomfortable in its dormancy but afraid to let go."¹⁰⁶ Religious believers can be torn apart in their efforts to maintain a private religiosity alongside a public secularity,¹⁰⁷ and it is hard to believe that this kind of religious schizophrenia can be maintained indefinitely. Either religion will regain a respected public role or else it is likely to suffer in

104. Peter L. Benson, et al, *Effective Christian Education: A National Study of Protestant Congregations* 15 (Search Institute, 1990). This three-and-a-half-year study involved in-depth surveys of over 11,000 participants within six major denominations: Christian Church (Disciples of Christ); Evangelical Lutheran Church in America; Presbyterian Church (U.S.A.); Southern Baptist Convention; United Church of Christ; and United Methodist Church. See id at 2-3. See also George W. Cornell, *Religious Beliefs Survey Brings a Few Surprises*, Chicago Trib B10 col 2 (Feb 9, 1990) (describing this study as "one of the largest, most comprehensive studies ever made of faith and its development among Americans").

105. Peter L. Benson, *Building a Faith for the 90s*, The Lutheran 9, 10 (Jan. 3, 1990) (author of study commenting on its findings).

106. Id.

107. See Gedicks, 4 Notre Dame J L Ethics & Pub Pol'y at 432-39 (cited in note 30). Compare Perry, *Morality, Politics, and Law* at 181-82 (cited in note 36) (arguing that religious convictions are self-constitutive and that "[t]o 'bracket' such convictions is . . . to bracket—to annihilate—essential aspects of one's very self").

Some individuals hold religious beliefs that themselves require significant political forbearance. For these individuals, of course, the problem of internal conflict is substantially reduced. See, for example, Samuel W. Calhoun, *Conviction Without Imposition: A Response to Professor Greenawalt*, 9 J Law & Relig 289, 315-17 (1992).

the private domain as well, with religious believers abandoning even the private aspects of their religious faith.¹⁰⁸

Although there is much more work to be done, this essay suggests a route by which religion—or at least some religions—can reclaim an important role in American public life. Perhaps most significant are my efforts to highlight the potential public role of reconciler religion, a type of religion that stands between religious fundamentalism and religious modernism. Whether as political insiders or as prophetic critics, religious reconcilers are open to competing ideas, strive to respond to modern ways of life, and nourish a healthy sense of religious humility and toleration. At the same time, however, they refuse to relinquish a meaningful role for religious text and tradition. As a result, reconciler religion offers a source of transcendent judgment, a source of judgment that could elevate American public life even as it provides its adherents with a meaningful and integrated religious identity.

To reconcile is to bring into harmony or agreement. In derivation, however, to reconcile means to repair or make good again; and to reconcile in the religious sense can mean to reconsecrate.¹⁰⁹ America's religious reconcilers can enrich our politics and our law. They can help repair, if not reconsecrate, the role of religion in American public life, and thereby the role of religion generally.

108. In their recently published book, Frederick Mark Gedicks and Roger Hendrix contend that religious alienation resulting from privatization, especially as experienced by religious fundamentalists, has created grave dangers for our political system. See Frederick Mark Gedicks and Roger Hendrix, *Choosing the Dream: The Future of Religion in American Public Life* (Greenwood Press, 1991). "The most recent turn to religion," they write, "will inevitably spawn a crisis in American government and politics." *Id.* at 4. "These are critical times," they continue. "If religion is not accepted into American public life, then ultimately religious Americans could become so frustrated in their assaults upon the secularism of public life that they would threaten the viability of the current social order—they might revolt." *Id.* Although the authors concede that religious violence is unlikely, they contend that conflict and polarization might nonetheless destabilize American society and seriously undermine our political conventions. See *id.* at 21-33. For this reason, among others, Gedicks and Hendrix argue that America must admit religion, including fundamentalist religion, as an equal participant in American public life, thereby accommodating the demands of the religious citizens who currently feel excluded.

Although I sympathize with much of what Gedicks and Hendrix say in their book, I do not share their fear of an impending crisis of political stability. As a result, I do not share their apparent belief that the need for political stability should be of paramount importance as we determine the proper role for religion in American public life. In any event, I do not believe that the need for political stability requires that we treat all religious arguments as equally valuable, as long as we continue to respect the legal rights and personal dignity of all our citizens, and as long as we proceed with caution and sensitivity as we evaluate the merits of competing religious claims.

109. See, for example, *The Random House Dictionary of the English Language* 1612 (Random House, 2d ed, 1987).